

TITLE: CIB 95-15 Class Deviation from AIDAR, Appendix A

June 9, 1995

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

FROM: DAA/M, Michael D. Sherwin, Procurement Executive

SUBJECT: Class Deviation from AIDAR, Appendix A

CONTRACT INFORMATION BULLETIN 95 - 15

A class deviation to the AIDAR was signed on May 16, 1995, which authorizes USAID contracting officers and negotiators to reveal the government estimate to bidders during the solicitation of performance-based contracts. This CIB provides intermediate guidance for this practice until the AIDAR, which currently prohibits the release of this information, can be formally amended.

AIDAR Appendix A, section 2(a) states that "...[u]nder no circumstances should the specific amount of funds which the Agency has available to support a contract be made known to the prospective contractor." It may be appropriate to do so, however, with performance-based contracting. Performance-based solicitations contain only the desired outcomes and associated performance measurement criteria; offerors have considerable flexibility to propose the implementation plan, and are not restricted by USAID-provided inputs, such as labor categories and level-of-effort ceilings. When utilizing performance-based contracting, it may be necessary to reveal the Government estimate, or a narrow range of expected costs, in order to obtain goods and services of the highest affordable technical quality, and to ensure that offerors do not propose elaborate programs that cannot be financed by USAID. Thus, the deviation was authorized in order to allow Contracting Officers and negotiators to reveal the Government estimate, or a narrow range of expected costs, to prospective offerors prior to award of performance-based contracts.

If you decide to provide the cost estimate to offerors for a performance-based contract, you should include it in the Commerce Business Daily (CBD) notice as well as the solicitation. If a change in the Government estimate or budget during the solicitation period invalidates the information given, you should

take the same actions as for non-performance-based solicitations, i.e., amendments or re-synopses if necessary. If a contract is to be incrementally funded, the associated risks should be communicated to offerors as well.

Until the AIDAR is formally amended, negotiation memoranda for these types of procurements should cite the May 16, 1995 class deviation as the authority for revealing the Government cost estimate prior to contract award until the AIDAR is formally amended.

Suggested language for use in performance-based solicitation documents follows:

Section B.3. ESTIMATED COST, FIXED FEE, AND OBLIGATED AMOUNT

The estimate for performance of the work required hereunder falls within a range from \$_____ to \$_____. Upon contract award, the total estimated contract cost shall be incorporated into this section.

Attachment: a/s

ATTACHMENT 1 TO
CIB 95-15

ACTION MEMORANDUM FOR THE DIRECTOR, OFFICE OF PROCUREMENT

FROM: Kathleen O'Hara, Chief, Policy Division,
Office of Procurement

SUBJECT: Class deviation from AID Acquisition Regulation (AIDAR) Appendix A, 2(a), regarding the disclosure of the Agency cost estimate to Contractors during the solicitation process

I. PROBLEM

AIDAR Appendix A, section 2(a) states that "...[u]nder no circumstances should the specific amount of funds which the Agency has available to support a contract be made known to the prospective contractor." However, when utilizing Performance-Based Contracting, it may be necessary to reveal the Government estimate, or a narrow range of expected costs, in order to obtain goods and services of the highest affordable technical quality. The purpose of this action memorandum is to request your approval of a class deviation to AIDAR Appendix A, section 2(a) permitting the disclosure of the Agency cost estimate to bidders during the solicitation process.

II. JUSTIFICATION

Performance based contracting was introduced in Office of Federal Procurement Policy Letter 91-2, dated April 9, 1991, and structures all aspects of an acquisition around the results of the work to be performed, as opposed to either the manner by which the work is to be performed or broad and ill-defined purpose statements. Performance-based solicitations contain only the desired outcomes and associated performance measurement criteria; offerors have considerable flexibility to propose the implementation plan, and are not restricted by USAID-provided inputs, such as labor categories and level-of-effort ceilings. However, to ensure that offerors do not propose elaborate programs that cannot be financed by USAID, it is necessary to communicate some boundaries during the solicitation phase. Revealing the government estimate up front is an ideal delimiter for the following reasons: 1) a budget ceiling indicates the magnitude of the project, 2) proposals can be tailored to fit within the Government's budget, and 3) USAID can evaluate the benefits of the different performance-based approaches relative to the overall cost.

Unless the Agency cost estimate is made known to bidders, certain applications of performance-based contracting simply will not work. Some performance-based statements of work specify absolutely no inputs, only desired results for which contractors would be held accountable. Providing inputs to bidders defeats the purpose of performance-based contracting; however, specifying no inputs leaves contractors vulnerable, in that they could conceivably propose approaches that are too elaborate for USAID's budget. Subsequent cost negotiations would attack substantive portions of their programs, and the resulting plans would not be as effective. In these situations, bidders need to be given some guidelines in order to propose approaches that have a reasonable chance of being funded. Providing the government estimate is an ideal way to level the bidding process in performance-based contracting, where solicitations often specify only outputs.

VI. RECOMMENDATION

For the reasons set forth above, I hereby recommend that you approve the proposed class deviation from the AIDAR. This class deviation shall be in effect for a period of two years from the approval date or formal amendment of the AIDAR, whichever comes first.

Approved:

- s - 5/16/95

Marcus L. Stevenson,
Director, Office of Procurement

Disapproved:

Marcus L. Stevenson,
Director, Office of Procurement